**IN THE UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

THE PRINCERIDGE GROUP LLC,

Plaintiff,

-against-

OPPIDAN, INC.,

Defendant.

Index No.: 11-CV-1460(AJN)

# STATEMENT OF UNDISPUTED MATERIAL FACTS UNDER LOCAL CIVIL RULE 56.1 IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Rule 56.1, Defendant Oppidan, Inc. ("Oppidan" or "Defendants") submits this Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment.

**Procedural Background:**

1. The PrinceRidge Group LLC ("PrinceRidge" or "Plaintiff") initiated suit in this Court on March 3, 2011, Docket Number 11-cv-1460 (the "Complaint"). Tonorezos Decl. ¶ 3.
2. The Complaint sets forth a cause of action for breach of contract and a cause of action for breach of the implied covenant of good faith and fair dealing. Tonorezos Decl. ¶ 3.
3. Depositions of PrinceRidge were conducted on July 19 and July 20, 2012 and August 2, 2012. Tonorezos Decl. ¶ 5, "T. Connors Dep."; Tonorezos Decl. ¶ 6, "M. Kirsch Dep."

**Letter of Intent and Engagement:**

4. On or about April 19, 2010, Plaintiff drafted and provided to Oppidan a "Letter of Intent" (hereinafter the "Contract"). Tonorezos Decl. ¶ 4.

5. The Letter of Intent was drafted by PrinceRidge. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 95:13-14.

6. The Contract sets forth that PrinceRidge Group LLC ("PrinceRidge") was to act as Oppidan's exclusive advisor in connection with the sale of the 16 properties. Tonorezos Decl. ¶ 4, Introduction and ¶1.

7. The Contract set forth that a list of the properties to be sold by PrinceRidge was attached to the Contract. Tonorezos Decl. ¶ 4, Introduction and ¶1.

8. The Contract defines the retention as "(i) in cooperation with the Company, familiarize itself with the properties, business, operations, financial condition, management and prospects of the portfolio, (the "Assets") (ii) introduce the Company to potential buyers of the Assets; and (iii) provide such other advisory and investment banking services upon which the parties may mutually agree." Tonorezos Decl. ¶ 4, Introduction and Retention ¶1(b).

9. The Contract reads that Compensation was based upon a commission, to be paid at closing, in an amount equal to 1.875% of the sales price. Tonorezos Decl. ¶ 4, Compensation ¶3.

10. PrinceRidge defined the commission as the "Success Fee". Tonorezos Decl. ¶ 4, Compensation ¶3(a).

11. The Contract also dictates that "PrinceRidge will appear on the closing statement and the Success Fee shall be disbursed from proceeds at the closing. The Success Fee shall be earned and paid based on the sales price of any assets sold within the portfolio." Tonorezos Decl. ¶ 4, Compensation ¶3(a).

12. The Contract further provides that if one of the properties is sold in the future to a buyer introduced by PrinceRidge, that PrinceRidge would still be entitled to compensation for sale of the property. Tonorezos Decl. ¶ 4, Compensation ¶15.

13. PrinceRidge contacted eighty-four (84) separate corporate entities to make introductions so as to allow the potential purchase to negotiate a contract for sale with Oppidan. Tonorezos Decl. ¶ 3, Complaint, ¶13.

14. PrinceRidge alleges it introduced NRP to Oppidan for discussions regarding the sale of the properties. Tonorezos Decl. ¶ 3, Complaint, ¶14.

**PrinceRidge's Action Plan to Sell the Real Estate:**

15. PrinceRidge's sole service was to act as the exclusive advisor in connection with the sale of the 16 Oppidan properties. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 102:18-22.

16. PrinceRidge's primary objective was to sell the properties. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 134:15-25, 135:2-15.

17. PrinceRidge provided Oppidan with written materials addressing PrinceRidge's strategy toward selling the properties. Tonorezos Decl. ¶ 7, Discussion Materials dated May, 2010.

18. The Discussion Materials contained facts regarding the properties that a potential purchaser of the property would want to know before a sale was consummated. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 159:17-23.

19. PrinceRidge provided a transaction overview detailing that PrinceRidge exclusively represented Oppidan in the sale of the 16 properties. Tonorezos Decl. ¶ 8, Transaction Overview.

20. PrinceRidge communicated to Oppidan that potential buyers of the properties, or individual properties, would submit bids for purchase directly to PrinceRidge. Tonorezos Decl. ¶ 9, Timing and Contact Information.

21. PrinceRidge's marketing materials for Oppidan addressed each individual property, including the location of the property and various information relating to the value of the property in a potential sale. Tonorezos Decl. ¶ 10, Portfolio Summary and Asset Summaries.

22. PrinceRidge had Oppidan appear at a meeting at PrinceRidge's New York office for PrinceRidge to discuss the process of finding buyers for the Oppidan properties. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 42:23-25, 43:2-4.

23. PrinceRidge's proposal to Oppidan was to address how PrinceRidge would go about indentifying potential buyers of the real estate, obtaining bids for the properties, and to address PrinceRidge's dealings in the commercial real estate market. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 43:19-25, 44:2.

24. Tom Connors confirmed that PrinceRidge was to find potential buyers. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 65:22-25, 66:2.

25. Part of consummating a sale for the properties included identifying people that were interested in buying the properties and making introductions to interested buyers. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 44:9-16.

26. PrinceRidge obtained data, including location, demographics and household income, that would provide potential buyers with information regarding the properties so that the potential buyers could use the information to determine a bid. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 162:5-24.

27. This information, included in the Discussion materials, would then be sent out to potential purchasers. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 73:5-14.

**PrinceRidge is not a Licensed Real Estate Broker:**

28. PrinceRidge is not a licensed real estate broker. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 67:24-25.

29. Mr. Connors testified that he did not have a license, registrations, or certifications in connection with real estate. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 16:16-22.

30. Mr. Kirsch also testified that he did not have any license to sell, broker or work as a real estate agent. Tonorezos Decl. ¶ 6, "M. Kirsch Dep."; at 15:17-19.

31. PrinceRidge did not have any license allowing PrinceRidge to act as a real estate broker. No documents were provided in response to the following two Demands for Production:

REQUEST NO. 34: A copy of any and all broker license and/or real estate licenses of any employee of Plaintiff.

REQUEST NO. 36: A copy of any and all licenses, certifications, and/or other materials which Plaintiff alleges provided it with the rights and/or legal ability to conduct any of its obligations under any Contract with Oppidan. Tonorezos Decl. ¶ 11, PrinceRidge's Supplemental Response to Oppidan's First Request for Production of Documents to Plaintiff, Requests 34 and 36, seeking evidence that PrinceRidge had a right in New York to sell the properties.

**PrinceRidge Took All Actions of a Real Estate Broker to Sell the Properties:**

32. PrinceRidge began listing the properties in May 2010. Tonorezos Decl. ¶ 12, Commercial Real Estate Direct report.

33. PrinceRidge held itself out as the real estate broker for the sale of the properties. Tonorezos Decl. ¶ 13, Dolan Media Newswire Story.

34. Matt Kirsch of PrincRidge was listed as "handling the sale". Tonorezos Decl. ¶ 13, Dolan Media Newswire Story.

35. PrinceRidge also listed the properties for sale with CoStar national property listing service. Tonorezos Decl. ¶ 14, Listings Review Request for Matt Kirsch, PrinceRidge.

36. PrinceRidge's internal discussions continued to address the listing of the properties with numerous various national real estate outlets. Tonorezos Decl. ¶ 15, emails dated May 3, 2010 by and between PrinceRidge – M. Kirsch and T. Connors.

37. PrinceRidge clarified to potential buyers that PrinceRidge was marketing the properties for sale. Tonorezos Decl. ¶ 16, emails dated June 2, 2010 from M. Kirsch to BPG Ltd., and June 7, 2010 from M. Kirsch to SL Green Realty Corp.

38. PrinceRidge's goal was to find a buyer for the properties and setting up a purchase of the properties. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 32:14-17.

39. Tom Connors worked with Matthew Kirsch to find buyers for the properties. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 33:14-15.

40. Part of PrinceRidge's role in selling the properties was to make sure PrinceRidge had all information regarding the properties so that PrinceRidge could communicate the higher value of the property so it was more likely a potential purchaser would agree to a purchase. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 47:2-9.

41. PrinceRidge set out to find potential buyers for the properties. PrinceRidge is not a licensed real estate broker. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 68:13-23, 71:14-24.

42. PrinceRidge armed themselves with pertinent data in order to address the value of the properties and discuss selling points with potential purchasers of the properties. Tonorezos Decl. ¶ 5, "T. Connors Dep."; at 76:12-20, 77:3-13.

Dated: New York, New York
May 17, 2013

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ,
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